



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MAC/143879

PRELIMINARY RECITALS

Pursuant to a petition filed September 14, 2012, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Public Assistance Collection Unit (PACU) to compel payment of a Medical Assistance (MA) liability, a hearing was held on November 06, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the PACU can compel payment of a public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services

1 West Wilson Street

Madison, Wisconsin 53703

By: Sue Rhode, Fraud Investigator

Waukesha County Health and Human Services

500 Riverview Avenue

Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner received MA benefits from at least September 2010, through September 2011.
3. On November 2, 2011 a MA overpayment notice and repayment agreement were issued to the petitioner, and were followed by dunning letters (March 2, 2012, May 2, 2012, June 4, 2012, and July 3, 2012). The overpayments occur as three claims: claim # [REDACTED] (\$2873.65), # [REDACTED] (\$220) and # [REDACTED] (\$2890.46), for a total of \$5984.11.
4. On November 2, 2011 a MA overpayment notice and repayment agreement were also issued to the petitioner's wife. The overpayments occur as three claims: claim # [REDACTED] (\$2873.65), # [REDACTED] (\$220) and # [REDACTED] (\$2890.46), for a total of \$5984.11.
5. On March 9, 2012 a payment in the amount of \$50 was paid on the petitioner's and on his wife's overpayment debt and applied against the total.
6. On April 3, 2012 the agency issued one letter (also called a monthly repayment summary) to the petitioner and one to his wife, confirming the amounts were credited, and that the remaining debt was \$5884.11.
7. The Department issued an Order to Compel Payment of Liability to the petitioner on August 17, 2012. Exhibit 2. It stated that the amount of the debt owed was \$5584.11 for claims # [REDACTED] and # [REDACTED].
8. The petitioner's wife has made payments towards her overpayment. The agency provided evidence to show that she has paid \$50 on 3/9/12, \$30 on 7/11/12, and \$50 on 7/31/12, 8/22/12, 9/18/12, and 10/23/12 on her overpayment claims.
9. At some point petitioner's wife entered into a Repayment Agreement, agreeing to repay her debt by making payments of \$50 per month.

DISCUSSION

Following issuance of a MA overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under [ch. 227](#) by filing with the department a request for a hearing within 30 days after the date of the order. *The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.*

(emphasis added)

Wis. Stat. §49.497(1m)(a).

The petitioner does not contest that he was overpaid; rather he argues that the repayment agreement that was entered into by his wife was thought to be a repayment agreement for both he and his wife. The repayment agreement was not available at hearing; however, there was no dispute that she agreed she would pay \$50 per month. This is also evidenced by her March 9, 2012 payment. While I could

understand that they thought the wife's repayment agreement would take care of their debt, for which they are jointly liable, the fact remains that she too failed to pay on her repayment agreement for three consecutive months from April – June. He failed to make any payment on his debt, with the exception of the March 9 payment. Under the law, the Department has the authority to recoup the debt now. Because the statute requires that the only issue I can consider here is whether petitioner "has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment", and he has neither repaid the overpayment, or entered into or complied with a repayment agreement, I must uphold the agency's action to compel the payment now.

There is nothing preventing the petitioner from contacting the Wisconsin PACU at 1- [REDACTED] to inquire if a new repayment agreement is still possible. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The PACU correctly issued an Order to Compel Payment of Liability for an MA overpayment \$5584.11 for claims # [REDACTED] and # [REDACTED] against the petitioner.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

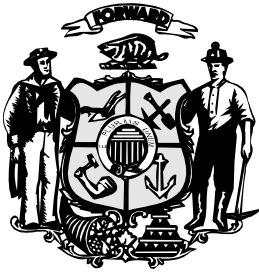
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of November, 2012

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 28, 2012.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability